Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

No. 76-1498

RONNIE EARL DAVIS ..... PETITIONER

VS.

COMMONWEALTH OF KENTUCKY ... RESPONDENT

BRIEF FOR RESPONDENT IN OPPOSITION TO A WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

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QUESTION PRESENTED:

Was a defendant twice placed in jeopardy in violation of the Fifth Amendment as applied to the States by the Fourteenth Amendment when he was acquitted in one circuit court of detaining a woman, and convicted in another circuit court of carnal knowledge of a woman, after being tried and acquitted of detaining a woman and rape?

COUNTERSTATEMENT OF THE FACTS

Petitioner, Ronnie Earl Davis, was first tried in Jefferson Circuit Court, Louisville, Jefferson County,

Kentucky for the crimes of detaining a woman against her will with intent to have carnal knowledge of her (KRS 435.110) and armed robbery (KRS 433.140). The jury acquitted him of both charges. He subsequently was tried in the Bullitt Circuit Court, Shepherdsville, Bullitt County, Kentucky, on charges of rape (KRS 435.090), detaining a woman against her will with intent to have carnal knowledge of her (KRS 435.110) and carnal knowledge of a female child under eighteen with her consent (KRS 435.100 -- statutory rape). He was acquitted of rape and detaining a woman, but convicted of carnal knowledge (statutory rape) and sentenced to ten years imprisonment by the jury.

The prosecuting witness testified that while she was sitting in a parked car with a male companion, they were accosted by petitioner, who held a gun on them, robbed the male companion and using the prosecuting witness as a hostage, ordered the male companion to leave. The prosecutrix testified that petitioner said:

> "Buddy, give me ten minutes and pick her up at Jerry's [a restaurant], and if you crank that car she's had it."

Instead of releasing the prosecutrix, the petitioner then forced her into his car, drove to Bullitt County, where the sex act was consummated. The prosecutrix was 16 years of age.

Petitioner contended that he picked up the prosecutrix at a nightclub in Jefferson County, drove her to Bullitt County, where they engaged in consentual sex.

REASONS FOR DENYING THE WRIT

The gravamen of Davis' contention is that his trial and acquittal in Jefferson County of the charge of detaining a woman to have carnal knowledge of her precluded his trial in Bullitt County of detaining a woman to have carnal knowledge of her, even though he was acquitted of that charge in Bullitt County, because jeopardy attached to the Bullitt County trial. He argues that the mere fact of being tried in Bullitt County of detaining tainted his conviction on the lesser charge by influencing the Bullitt County jury to sentence him to the maximum of ten years imprisonment.[1]

In the state appeal, Davis argued that the offense of carnal knowledge (statutory rape) and detaining a woman against her will are both lesser included offenses within the offense of rape and that an acquittal on any one must be an acquittal on all; that detaining is a lesser included offense of carnal knowledge. But here, he has abandoned that tack, setting all his sails in the one direction -- that what was litigated in Jefferson County was relitigated in Bullitt County. Ergo, he was subject to former jeopardy.

He cites *Price* v. *Georgia,* 398 U.S. 323, 90 S.Ct. 1757, 26 L.Ed.2d 300 (1970), and *Breed* v. *Jones,* 421 U.S. 519, 95 S.Ct. 1779, 44 L.Ed.2d 346 (1975), as support for the granting of the writ.

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[1] In Kentucky, the jury determines the sentence, not the trial judge.

But, we submit that the facts in *Price,* supra, and *Breed,* supra, are inapposite to the present case.

In *Price,* supra, the accused was first tried for murder and convicted of manslaughter. He appealed on a question of error in the instructions, and the appellate court reversed. He was then again tried for murder and manslaughter and again convicted of manslaughter. Jeopardy attached there because the same *crime* in the same *jurisdiction* was present.

In *Breed,* supra, a juvenile was tried in an adjudicatory proceeding in juvenile court and then transferred to the adult court for trial. Jeopardy attached there because although different courts were involved, the same *crime* in the same *jurisdiction* was present.

Those are not the facts here. The events in this case involve alleged crimes in separate jurisdictions -- Jefferson and Bullitt Counties; events with some common facts, but basically different in each jurisdiction.

The Jefferson County jury in acquitting Davis determined that what happened in Jefferson County was not detention of a woman for the purpose of having carnal knowledge of her. The Bullitt County jury determined that what happened *there* in *Bullitt County,* although it involved the same actors or participants, did prove that appellant was guilty of carnal knowledge of a minor. The Bullitt County jury could have convicted Davis of detaining a woman for purposes of carnal knowledge there, and this charge would not have involved the former jeopardy clause, because they involved separate *acts* in separate *locations* in separate *jurisdictions.*

What began as an abduction for one purpose (the taking of a temporary hostage to effect an escape from an armed robbery) in Jefferson County changed to an abduction for another purpose in Bullitt County (detention for purposes of having carnal knowledge of a woman). Thus, the same factual acts are not involved between the Jefferson County detention and the Bullitt County detention. That being so, Davis' being required to stand trial on detaining a woman in Bullitt County after acquittal of such a charge in Jefferson County did not taint his conviction of carnal knowledge in Bullitt County.

CONCLUSION

No Former Jeopardy taints Davis' conviction of carnal knowledge and this Court should deny the granting of a Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Brief for Respondent in Opposition to a Writ of Certiorari to the Supreme Court of Kentucky were mailed, postage prepaid, to Honorable Brian D. Schaefer, Honorable Edward C. Airhart and Honorable Michael J. Kopen, Attorneys for Petitioner, 440 South Seventh Street, Louisville, Kentucky 40203, this 16th day of May, 1977.